IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 719 OF 2005

Mr. Gopal Das Mittal ... Petitioner

V/s

1 M/s CITIBANK N.A. & Ors. ... Respondents

Shri G.R.Sharma for petitioner

Shri A.M. Shingarpure, APP for the State.

Coram : V.M. Kanade, J.

Dated : 13/04/2005.

P.C. :-

1 The petitioner is challenging the order of issuance of process passed by the Metropolitan Magistrate,6th Court, Mazgaon, Mumbai on the complaint filed under section 138 of the Negotiable Instruments Act by the respondent No.1.

2 The case of the complainant is that the accused was granted credit card facility which was availed by him from time to time and towards discharge of said liability, the petitioner had issued the cheque dated 18/12/1998 drawn on

Union Bank of India, Kalbadevi Branch in favour of the respondent No.1. When the cheque was presented in the bank it was dishonoured. The demand notice was served on the petitioner and thereafter the complaint was filed under section 138 of the Negotiable Instruments Act. It is submitted by the learned counsel appearing on behalf of the petitioner that the petitioner is neither a drawer of the cheque nor had signed the cheque. Therefore, the complaint filed against him is not maintainable. It is further submitted that the cheque in question was issued by the proprietor of M/s Chitrakoot Distributors. However, the complaint was filed against a proprietory firm and, therefore, on that ground also, the complaint is not maintainable. It is further submitted that show cause notice was not delivered to the petitioner and that wrong address was mentioned in the said notice and, therefore, there was non-compliance of provisions of section 138 of the Negotiable Instruments Act.

3 I am unable to accept the submission made by the learned counsel for the petitioner. I have perused the complaint which was filed in the trial court. In paragraph-2 of the complaint, there are specific averments that the accused was granted “citibank credit card” facility. In paragraph-3 it is stated that the accused had availed credit card facility and agreed to pay the amount due at the end of every month. In paragraph-6, the details

regarding issuance

of legal notice, date on which it was issued, date on which it was sent and date on which received by the accused have been mentioned and the copies of receipt and notice are annexed to the complaint. Thus, the submission of the learned counsel for the petitioner cannot be accepted. All the questions raised by the petitioner are kept open and the same can be decided only after evidence is adduced by both parties in the trial court on merits and in accordance with law. Criminal writ petition is accordingly dismissed.

(V.M. Kanade, J.)